

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

ANTONIO M. ROSS

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PLAINTIFF

v.

Civil No. 1:20cv351-HSO-BWR

**SHERMAINE SULLIVAN,
*Chief Deputy United States
Marshal's Service, et al.***

DEFENDANTS

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION [61], AND DISMISSING PLAINTIFF'S CLAIMS
AGAINST DEFENDANT UNKNOWN DOCTOR**

This matter comes before the Court on the Report and Recommendation [61] of United States Magistrate Judge Bradley W. Rath, entered in this case on February 24, 2023. The Magistrate Judge recommended that Plaintiff Antonio M. Ross's claims against the sole remaining Defendant Unknown Doctor, who has yet to be identified, be dismissed without prejudice for Plaintiff's failure to prosecute and obey Court Orders. *See R. & R. [61] at 1, 6.*

Plaintiff has not objected to the Report and Recommendation [61], and the time for doing so has passed. *See Fed. R. Civ. P. 6(d); Fed. R. Civ. P. 72(b)(2); L.U. Civ. R. 72(a)(3).* Based upon a review of the record, the Court finds that the Report and Recommendation [61] should be adopted and that Plaintiff's claims against Unknown Doctor should be dismissed without prejudice.

I. BACKGROUND

On November 12, 2020,¹ Plaintiff Antonio M. Ross (“Plaintiff” or “Ross”) filed a Complaint [1] in this Court, naming as Defendants Chief Deputy United States Marshal Shermaine Sullivan, Stone County Sheriff Mike Farmer, Stone County Nurse Susan Cooper, an unknown doctor from the Stone County Jail (“Unknown Doctor”), the Federal Bureau of Prisons (“BOP”), Stone County Captain Eddie Rogers, two BOP employees, and the United States Department of Justice. *See* Compl. [1]. Plaintiff advanced causes of action under 42 U.S.C. § 1983, *Bivens*, and the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq. (“FTCA”). *See id.* at 2, 8 (citing *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971)). Ross alleged that Defendants violated his Eighth and Fourteenth Amendment rights by denying, interfering with, and delaying medical treatment. *See id.*

Except for Ross’s claims against the Unknown Doctor, his claims against all other Defendants have been dismissed. *See* Order [11]; Text Order, July 1, 2022; Order [51]; Order [53]. Ross has never identified Unknown Doctor and has not complied with Orders [9], [11], [54], [55] entered by the Magistrate Judge concerning identifying the Unknown Doctor in order for process to issue. *See* R. & R. [61] at 1-3. In light of Ross’s noncompliance and his clear record of delay and contumacious conduct, the Magistrate Judge recommends that Ross’s claims against the remaining Defendant Unknown Doctor be dismissed without prejudice.

¹ Ross executed his Complaint [1] on November 12, 2020, and the Clerk of Court received and docketed it on November 23, 2020. *See* Compl. [1] at 1, 20.

See id. at 6. To date, Ross has not objected to the Report and Recommendation [61], and the time for doing so has passed. *See* Fed. R. Civ. P. 6(d); Fed. R. Civ. P. 72(b)(2); L.U. Civ. R. 72(a)(3).

II. DISCUSSION

Where no party has objected to a magistrate judge's report and recommendation, the Court need not conduct a de novo review of it. 28 U.S.C. § 636(b)(1) (“[A] judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made.”). In such cases, the Court applies the “clearly erroneous, abuse of discretion and contrary to law” standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Having conducted the required review, the Court concludes that the Magistrate Judge's findings are not clearly erroneous, nor are they an abuse of discretion or contrary to law. The Court will adopt the Magistrate Judge's Report and Recommendation [61] as the opinion of this Court, and Ross's claims against Unknown Doctor will be dismissed without prejudice for failure to prosecute and obey Orders of the Court.

III. CONCLUSION

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Report and Recommendation [61] of United States Magistrate Judge Bradley W. Rath, entered in this case on February 24, 2023, is **ADOPTED**.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Plaintiff Antonio M. Ross's claims against Defendant Unknown Doctor are **DISMISSED WITHOUT PREJUDICE** for failure to prosecute and obey Court Orders.

SO ORDERED AND ADJUDGED, this the 22nd day of March, 2023.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE